IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

SANJEEV MANTRI VS. STATE OF RAJASTHAN & ORS.

(D.B.C.Writ Petition No.1146/92)

Date of Judgment :- 19th July,2006.

PRESENT

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE JUSTICE SHRI MOHAMMAD RAFIQ

Mr.M.Mridul, Sr.Advocate with Mr.P.S.Chundawat, for the petitioner.
Mr.S.K.Vyas, Additional Government Advocate for the State.

BY THE COURT:(PER HON'BLE THE CHIEF JUSTICE)

This writ petition on behalf of sole petitioner has been filed seeking a number of reliefs. Basically, he wants enlargement of scope of promotion to the post of Executive Officer-III in the Rajasthan Municipal Services. He is a Revenue Officer which post is treated as `Technical Officer' under Section 308 of the Rajasthan Municipalities Act, 1959 (in short “the Municipalities Act”). He has challenged the validity of Section 308 to the extent the post of Revenue Officer has been treated as Technical Officer and has prayed for deletion of the post from the category of Technical Officer and its inclusion in the category of Administrative Officer and a consequential direction to consider his case for promotion to the post of Executive Officer-III.

The brief facts of the case are that on 25.11.1973 the

petitioner was appointed by the Director,Local Bodies as Executive Officer-V on temporary basis for six months or till selection by the Rajasthan Public Service Commission. In course of time, the Rajasthan Public Service Commission advertised the posts of Executive Officer and Revenue Officer and the petitioner was selected for both the posts. He opted for the post of Executive Officer and accordingly on 6.2.1980 he was appointed as Executive Officer-IV. He later changed his option when-to quote the petitioner himself vide para 4 of the writ petition-“it was felt by the petitioner that avenues of promotion are better on the line of Revenue Officers” . In accordance with the changed option, on 5.4.1980 he was appointed as Revenue Officer-II. On 26.5.1984 he was confirmed on the post. The case of the petitioner is that in view of his seniority on the post of Revenue Officer-II, he should have been promoted as Revenue Officer-I in 1985 itself and further promoted as Executive Officer-II under the then existing law. The petitioner has referred to Section 302 of the Municipalities Act which empowers the State Government to create and constitute Rajasthan Municipal Services. Under sub-section(2) thereof, the services can be divided into different categories and sub-divided into different grades consisting of Administrative Officers as well as Technical Officers. Section 307 deals with appointment of Administrative Officers including Executive Officer, Section 308 deals with the posts of Technical Officers including Revenue Officer. We shall refer to these provisions later in the judgment.

According to the petitioner, after coming into force of the Municipalities Act, the State Government framed rules called Rajasthan

Municipal Service Rules, 1961 under notification dated 28th March, 1961. These rules contained schedule under which the posts of Commissioner,Executive Officer of different classes and Revenue Officers were categorized as Administrative Officers and the posts of Engineers and Overseers were categorized as Technical Officer. However new set of rules called Rajasthan Municipalities Services Rules, 1963(in short "the 1963 Rules") was framed on 22nd October, 1963 superseding the old rules. In the 1963 Rules the post of Revenue Officer has been included in the category of Technical Officer. According to the petitioner, the post of Revenue Officer was correctly treated as a post of Administrative Officer in the old rules and its categorisation on Technical Officer adversely affects the chances of promotion to higher positions. This is the heart of grievance of the petitioner.

The nature of the grievance would become further clear from reference to the Schedule appended to the 1963 Rules. But, before referring to the Schedule, it may be appropriate to mention that rule 7 of the 1963 Rules provides for methods of the recruitment; (a) by direct recruitment as specified in column 3 of the schedule, or (b) by promotion from the posts specified in column 4 of the schedule, or (c) by transfer. Part IV(rules 17 to 23 A) of the Rules deals with procedure for direct recruitment while Part V (rules 24 to 25) contains the procedure for recruitment by promotion. Rule 24 lays down that selection for promotion from lowest post or category of post in the service to the next higher post or category in the service as mentioned in the Schedule shall be made solely on the basis of seniority-cum-merit from amongst the persons who

have put in the requisite period of service. In terms of the proviso, in the event of non-availability of the persons with the requisite period of service, the Committee may consider persons having less than the prescribed period of service if they are otherwise found suitable for promotion on the basis of seniority-cum-merit. Under sub-rule(4) of rule 24, selection for promotion to all higher posts or higher categories of posts in the service as mentioned in the Schedule shall be made on the basis of merit alone. It is not necessary to notice the rest of the provisions for the purpose of this case.

Adverting to the Schedule, it will be appropriate to extract the relevant parts thereof as under :-

S.No.	Category with designation and graduation	Source of Recruitment.	Post and Quota from which appointment by promotion is to be made.	Minimum Experience required for promotion.	Qualifications for direct recruitment.	Remarks .
1	2	3	4	5	6	7
I- Administrative Officers:						
1	-	-	-	-		
2.	Executive Officer Class II or Secretary, Municipal Council.	100% by promotion on the basis of merit .	Executive officer Class III- 66 2/2% or Revenue Officer Grade-I 33 1/3%	Five Years' Experience		First 2 promotions from E.O. Class III and then promotion from R.O. Gr. I and this cycle to be repeated

3.	Executive Officer Class III.	100% by promotion on the basis of seniority-cum-merit.	Executive Officer Cl.IV 60% or Revenue Officer Gr.II 20% or Assessor 10 or Office Superintendent 10%.	Five years' Experience.		First 3 promotions from E.O. Cl. IV, then I promotion from R.O. Gr.II and then I promotion from Assessor and Office Superintendent alternatively and this cycle to be repeated.
4.	Executive Officer Class IV.	100% by direct recruitment.	-	-	-	-
II- Technical Officers.						
1.	-	-	-	-	-	-
2.	-	-	-	-	-	-
3.	-	-	-	-	-	-
4.	-	-	-	-	-	-
5.	-	-	-	-	-	-
6.	Revenue Officer Gr.I.	100% by promotion on the basis of Seniority-cum-merit.	Revenue Officer Grade II 20% or Executive Officer Class IV 60% or Assessor 10% or Office Superintendent 10%	5 years' experience.		First 1 promotion from R.O. Gr.II, then 3 promotions from E.O. Class IV and then I promotion from Assessor and Office Superintendent alternatively and this cycle to be repeated.
7.	Revenue Officer Grade II.	100% by direct recruitment.			-	

It would appear that appointment on the post of Executive

Officer-IV will be made 100% by direct recruitment and on the post of Executive Officer-III 100% by promotion on the basis of seniority-cum-merit from amongst Executive Officers-IV, Revenue Officers-II, Assessors and Office Superintendents as per their respective quotas. The quota for Executive Officer-IV is 60%, for Revenue Officer-II 20% and 10% each for Assessor and Office Superintendent. The first three promotions will be made from Executive Officer-IV, the fourth promotion from Revenue Officer-II and fifth promotion from Assessor and Office Superintendent alternatively. This cycle will be repeated. In other words after five promotions are made, again first three promotions will be from amongst Executive Officers-IV and the fourth promotion from amongst Revenue Officer-II. Likewise, the post of Revenue Officer-II will be filled up 100% by direct recruitment while the post of Revenue Officer-I will be filled up 100% by promotion on the basis of seniority-cum-merit from amongst Revenue Officers-II, Executive Officers-IV, Assessors and Office Superintendents in the same ratio i.e. 60% for the Executive Officers-IV, 20% for the Revenue Officers-II and 10% each for the Assessors and Office Superintendents. However, while the first promotion will be made from amongst Revenue Officer-II, the next three promotions will be made from amongst Executive Officer-IV and fifth promotion thereafter shall be made from amongst Assessors and Office Superintendents, alternatively; and after five promotions, the same cycle will be repeated.

The submission of the counsel for the petitioner was that in view of the cyclic order fixed in the Rules, the petitioner may never get chance of promotion. And in this view of the matter, the provision treating

Revenue Officer as Technical Officer deprives the Revenue Officers-II of the chance of promotion is arbitrary and therefore Section 308 alongwith the corresponding provisions of the Rules and the Schedule should be held to be ultra vires.

The question which at the first instance arises is whether while exercising power of judicial review under Article 226 of the Constitution of India, this Court can direct amendment of Section 308 by deleting the post of Revenue Officer from the category of Technical Officer and including them in the category of Administrative Officers under Section 306. We have grave doubts if we can do that but it is not necessary to go into the larger question as we are satisfied that the Revenue Officers not only have chance of promotion but by providing a cyclic order the chance of promotion on the post of either Executive Officer-III or Revenue Officer-I has been made more certain and concrete.

As indicated above, fourth promotion on the post of Executive Officer-III is to be made from amongst Revenue Officers-II and likewise, first promotion on the post of Revenue Officer-I is to be made from amongst them. It is true that the Executive Officers-IV have an advantage over the Revenue Officers inasmuch as their chances of promotion numerically are more. Whereas first three promotions on the post of Executive Officer-III and likewise second, third and fourth promotions on the post of Revenue Officer-I are to be made from Executive Officer-IV compared to only fourth promotion on the post of Executive Officer-III and first promotion on the post of Revenue Officer-I

from amongst Revenue Officer-II, but that is so because of the cadre strength of the post. In the statement containing details of the cadre posts furnished by the Government Advocate, the number of posts in the cadre of Executive Officer and Revenue Officer is shown as follows:-

Executive Officer-II	-	49	
Executive Officer-III		-	58
Executive Officer-IV		-	72
Revenue Officer-I	-	15	
Revenue Officer-II	-	54	

It is evident that the cadre strength of the post of Executive Officer-IV being 72 against the cadre strength of the post of Revenue Officer-II being 54, allowing a higher quota for promotion to the Executive Officer-IV from the cadre of the Revenue Officers cannot be said to be arbitrary. Whereas the first, second and third promotions on the post of Executive Officer-V will be made from Executive Officers-IV, the fourth vacancy has to go to Revenue Officer-II. Likewise, the first vacancy on the post of Revenue Officer-I has to go to Revenue Officer-II. It is significant to mention that promotion on the post of Executive Officer-II is also made from amongst Executive Officers-III and Revenue Officer-I in the manner that first and second vacancies will go to Executive Officer-III, the third vacancy will go to Revenue Officer-I. The Revenue Officers therefore make a grievance that they do not have chance of promotion. Fixing the cyclic order- complained of - is like fixing roster points which makes the chance of promotion certain and more real and no grievance can be made against the same.

So far as the petitioner is concerned, as mentioned above ,

he earlier opted for the post of Executive Officer but on re-consideration, as he thought that the chance of promotion would be more in the line of Revenue Officer, he changed his option. The Rules were framed in 1963. The petitioner was appointed much later in 1980. He cannot make any grievance of the amended rules nor can fall back or derive any benefit from the old rules which stood repealed in 1963 itself in support of his case. He cannot at a later stage challenge the vires of the rules under which he was appointed.

In the above premises we find no merit in this writ petition which is accordingly dismissed. There will be no order as to costs.

(MOHAMMAD RAFIQ),J. **(S.N.JHA),C.J.**

Aditya/-